

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

1:23-CV-152

David John Hetzel, MD,

Plaintiff,

vs.

ANC Healthcare, Inc.;
ANC Mission Hospital, Inc.;
HCA Healthcare, Inc.;
HCA Management Services, LP;
MH Master Holdings, LLLP;
MH Hospital Manager, LLC;
MH Mission Hospital, LLLP; and
HCA Healthcare Mission Fund, LLC,
Defendants.

Motion to Seal Brief and Exhibit
Supporting Motion to Dismiss

The Mission Defendants¹ hereby request leave under Local Rule 6.1 to file materials in support of their motion to dismiss under seal. To comply with Local Rule 6.1, Mission states the following:

1. We wish to file the following materials under seal:
 - a. An unredacted version of Mission's reply brief in support of dismissal, which discusses portions of the Data Bank Report at the heart of this lawsuit.
2. Dr. Hetzel has consented to the filing of the Report itself, and the briefing discussing it, under seal. Dr. Hetzel filed his response to the motion to dismiss under seal. (Doc. 31.)
3. Sealing is necessary because "[i]nformation reported to the NPDB is ... confidential" and must not be disclosed except through the procedures for querying

¹ MH Mission Hospital, HCA Healthcare, HCA Management, MH Master, MH Hospital Manager, and HCA Healthcare Mission Fund.

the Data Bank and challenging a Data Bank report. 45 C.F.R. § 60.20(a). *See United States v. DVH Hospital Alliance*, 2023 WL 3724178 (D. Nev. 2023) (sealing Data Bank reports); *Doe v. Azar*, 2020 WL 13349088 (M.D. Fla. 2020) (same).

4. There is no alternative to filing the unredacted reply brief under seal because the Report is directly at issue in this case. Every one of Dr. Hetzel's claims revolves around the Report's contents. So Mission must be able to discuss the Report's contents. And discussing the Report's contents in a public filing would disclose "information reported to the NPDB" to the public, which § 60.20 is designed to prevent. 45 C.F.R. § 60.20(a).

5. We seek permanent sealing of the reply brief because the confidentiality mandate of § 60.20 is not time-limited.

6. Along with this motion, we are filing the following:

- a. A redacted copy of the brief and its exhibit.
- b. An unredacted copy of the brief and its exhibit, under seal as permitted by Local Rule 6.1(d).

This the 27th day of October, 2023.

Roberts & Stevens, PA

/s/David Hawisher

Phillip Jackson (#21134)

pjackson@roberts-stevens.com

David Hawisher (#55502)

dhawisher@roberts-stevens.com

PO Box 7647

Asheville, NC 28802

(828) 252-6600

Counsel for Mission

Certificate of Service

I hereby certify that I electronically filed the foregoing document using the CM/ECF system, which automatically serves all counsel of record.

This the 27th day of October, 2023.

Roberts & Stevens, PA

/s/David Hawisher

David Hawisher